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# Supreme Court of the United States

OCTOBER TERM, 1940.

No. 229.

ELIZABETH WRIGHT AND CHARLES C. WRIGHT,
PETITIONERS,

VS.

GUSTA LOGAN, HARRIET LOGAN SAWYER AND
EXIA LOGAN REESE, RESPONDENTS.

## PETITION AND BRIEF

**For Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.**

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## INDEX

### Petition


I. A Summary Statement of the Matter Involved ..... 2

II. Statement of the Basis of the Jurisdiction of This Court ..... 3

III. The Questions Submitted ..... 3

IV. Reasons Relied Upon for the Allowance of the Writ ..... 5

Prayer ..... 7


### Brief


The Report of the Decision Below ..... 9

Grounds on Which the Jurisdiction of This Court Is Invoked ..... 10

Statement of the Case ..... 10

Specification of Errors ..... 15

Summary of the Argument ..... 16

Argument ..... 16

- Preliminary statement ..... 16
- Two essential facts ..... 18
- The narrow question ..... 21
- The Borchard and Wright dismissals compared ..... 22
- The master's deed is void ..... 23
- Illinois law of foreclosure ..... 24
- Applicable pronouncements of this court ..... 24

Conclusion ..... 26

## TABLE OF CASES

A

Adair vs. Bank, 303 U. S. 350 ..... 24, 25

B

Borchard vs. California Bank, 310 U. S. 311 ..... 5, 22, 26
Byrenius, In re, 30 Fed. Supp. 243 ..... 6

C

Cohan vs. Elder, 112 F. 2d 967 ..... 6
Cohan vs. Elder, 118 F. 2d 850 ..... 6, 7

E

Ellis vs. Connecticut Mutual, 111 F. 2d 896 ..... 6

F

Federal Land Bank vs. Hansen, 109 F. 2d 139 ..... 6

H

Haun, In re, 35 Fed. Supp. 338 ..... 6

J

John Hancock vs. Bartels, 308 U. S. 180 ..... 5, 22, 25

K

Kalb vs. Feuerstein, 308 U. S. 433 ..... 5, 12, 24
Kauffman, In re, Commerce Clearing House, Bankruptcy Law Service, Paragraph 53175 ..... 7

L

Lightcap vs. Bradley, 186 Ill. 510, 532 ..... 24

Mc

McCook vs. Federal Land Bank, 108 F. 2d 185 ..... 6

M

Mahaffey, In re, 34 Fed. Supp. 760 ..... 7

P

Paradise Land Company vs. Federal Land Bank, 108 F. 2d 832 ..... 6
Peterson vs. John Hancock, 116 F. 2d 148 ..... 6

S

Schreiver vs. Oxford, 116 F. 2d 684 ..... 6
Shaw, In re, 35 Fed. Supp. 337 ..... 6
Storm, In re, Commerce Clearing House, Bankruptcy Law Service, Paragraph 52579 ..... 6

T

Trego vs. Wright, 111 F. 2d 990 ..... 6

W

Williams, In re, Commerce Clearing House, Bankruptcy Law Service, Paragraphs 53225 and 53226 ..... 7
Wright vs. Logan, 75 F. 2d 685 ..... 16
Wright vs. Logan, 119 F. 2d 354 ..... 2, 9
Wright vs. Logan, 228 Ill. 481 ..... 10, 11, 17, 18
Wright vs. Union Central, 311 U. S. 273 ..... 22, 25, 26

Z

Zumkehr vs. Steinman, 108 F. 2d 448 ..... 6

# Supreme Court of the United States

OCTOBER TERM, 1940.

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ELIZABETH WRIGHT AND CHARLES C. WRIGHT, PETITIONERS,

VS.

GUSTA LOGAN, HARRIET LOGAN SAWYER AND EXIA LOGAN REESE, RESPONDENTS.

## PETITION

**For a Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.**

(The brief in support of this petition begins at page 9).

To the Honorable Harlan Fiske Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States.

Your petitioners respectfully show:

## I.

## A SUMMARY STATEMENT OF THE MATTER INVOLVED.

This petition presents the question whether a farmer debtor may be denied the right to file an amended petition for the three year moratorium upon the theory that the administration of proceedings for composition or extension in the court's opinion has already given the farmer debtor the "equivalent of a three year moratorium." The time consumed was due to the acts of the court itself.

The questions submitted arise out of Section 75 of the Bankruptcy Act; 11 U. S. C., Section 203, which relates to proceedings for the rehabilitation of farmer debtors.

The decision below is reported as *Wright* v. *Logan*, 119 F. 2d 354, and it appears at pages 68 to 71 of the record which is submitted herewith.

The final order (and opinion) of the bankruptcy court which was the subject of the appeal below is at R. 48. This order refers to previous orders and opinions of the court at R. 36 to 40, and at R. 44. The latter order refers to a former order at R. 41. It is necessary to read all four orders for a clear understanding of the final order.

After failing to secure composition or extension under Section 75 (a) to (r) the farmer debtors filed their amended petition under Section 75 (s) (R. 47, R. 5, second entry of March 2, 1940).[1]

---

[1]The notation made by the clerk of the bankruptcy court for the record at R. 47 designates this amended petition as having been "Tendered" but the original docket entry made by the clerk designates it as filed (R. 5, third entry of March 2, 1940). This docket entry reads: "Mch. 2-40 Filed Amended debtor's petition in proceedings under Section 75, sub. (s)." The Appellate Court opinion says "On March 2, appellants filed an amended petition" (R. 70, bottom of page).

The bankruptcy court (1) denied the amended petition upon the ground that the farmer debtors already had "enjoyed" the "equivalent" of proceedings under Section 75 (s) (R. 48); (2) it removed all restrictions upon the exercise by the mortgage holders of all rights under a deed issued while proceedings under Section 75 (a) to (r) were pending; (3) it gave full force and effect to said deed; (4) it ordered the farmer debtors to surrender possession of their farm and (5) it dismissed the farmer debtor proceedings. The Circuit Court of Appeals affirmed the bankruptcy court's dismissal upon the same ground (R. 68 to 71).

## II.

## STATEMENT OF THE BASIS OF THE JURISDICTION OF THIS COURT.

The jurisdiction of this court is conferred by Section 240 (a) of the Judicial Code; 28 U. S. C. 347 (a).

The petitioners have complied with Section 8 (a) of the Act of February 13, 1925; 28 U. S. C. 350. The final judgment of the court below (R. 72) became final on May 21, 1941, when a petition for rehearing was denied (R. 73). This petition is filed within three months thereafter.

## III.

## THE QUESTIONS SUBMITTED.

The questions submitted are:

1.

Whether the bankruptcy court could deny the amended petition of the farmer debtors by which they sought rehabilitation under the three year farmer debtor moratorium provision of Section 75 (s) because the court

concluded they already had the substantial benefits of Section 75 (s) under the administration of the proceedings pursuant to Section 75 (a) to (r) for composition or extension.

2.

Whether the bankruptcy court could dismiss the farmer debtor proceedings when the farmer debtors had on file, or had left with the clerk for filing, their amended petition under Section 75 (s).

3.

Whether the bankruptcy court without compliance with Section 75 (o) could give full force and effect to a deed in foreclosure delivered to the mortgage holders during pendency of proceedings under Section 75 (a) to (r) for composition or extension.

4.

Whether the bankruptcy court, without compliance with Section 75 (o), could authorize the mortgage holders to exercise all rights as grantees under a deed in foreclosure for composition or extension.

5.

Whether the bankruptcy court could order the farmer debtors to surrender possession of their farm when they had on file, or had left with the clerk for filing, their amended petition under Section 75 (s).

6.

Whether the bankruptcy court, while proceedings were pending for composition or extension under Section 75 (a) to (r), could lawfully order the farmer debtors to redeem their security by paying a certain sum of money.

## IV.

## REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI.

The decision below is in conflict with the decision of this court in *John Hancock* v. *Bartels*, 308 U. S. 180. That decision held that a farmer debtor whose petition under Section 75 (a) to (r) has failed to accomplish composition or extension has a right to seek a three year moratorium and redemption of his property from mortgage by invoking Section 75 (s) through an amended petition. The decision below denied that right.

2.

In so far as the decision below may be defended upon the ground of the length of time the proceedings were pending under Section 75 (a) to (r) for composition or extension (said length of time being due to the acts of the court itself), it is in conflict with the decision of this court in *Borchard* v. *California*, 310 U. S. 311.

3.

The decision below is in conflict with the decision of this court in *Kalb* v. *Feuerstein*, 308 U. S. 433, which decided that a deed in foreclosure delivered during the pendency of proceedings under section 75 (a) to (r) is absolutely void; that the grantees in said deed take no right whatsoever, and that their possession pursuant to such deed is unlawful and void.

4.

The decision below is in direct conflict with the decisions of other federal courts.

It is in conflict in the following Circuit Court of Appeals decisions:

Second Circuit:

*Federal Land Bank* v. *Hansen*, 109 F. 2d 139.

Fifth Circuit:

*McCook* v. *Federal Land Bank*, 108 F. 2d 185.

Sixth Circuit:

*Ellis* v. *Connecticut Mutual Life Insurance Company*, 111 F. 2d 896.
*Trego* v. *Wright*, 111 F. 2d 990
*Schreiver* v. *Oxford*, 116 F. 2d 684.

Seventh Circuit:

*Zumkehr* v. *Steinman*, 108 F. 2d 448.

Eighth Circuit:

*Peterson* v. *John Hancock*, 116 F. 2d 148.

Ninth Circuit:

*Cohan* v. *Elder*, 112 F. 2d 967.
*Cohan* v. *Elder*, 118 F. 2d 850.

Tenth Circuit:

*Paradise Land Company* v. *Federal Land Bank*, 108 F. 2d 832.

It is in conflict with the following District Court decisions:

District Court of Idaho:

*In re Shaw*, 35 Fed. Supp. 337.
*In re Haun*, 35 Fed. Supp. 338.

District Court of Illinois:

*In re Storm*, Commerce Clearing House, Bankruptcy Law Service, Paragraph 52579.

District Court of New Hampshire:

*In re Byrenius*, 30 Fed. Supp. 243.

District Court of New York:

*In re Williams*, Commerce Clearing House, Bankruptcy Law Service, Paragraphs 53225 and 53226.

*In re Mahaffey*, 34 Fed. Supp. 760.

District Court of Pennsylvania:

*In re Kauffman*, Commerce Clearing House, Bankruptcy Law Service, Paragraph 53175.

5.

The decision of the court below is directly in conflict with the decision of another Circuit Court of Appeals on the same subject. *Cohan* v. *Elder*, 118 F. 2d 850 (C. C. A. 9). Certiorari denied May 26, 1941.

Wherefore your petitioners pray that a writ of certiorari may issue to the Circuit Court of Appeals for the Seventh Circuit directing it to certify and send to this court a transcript of the record and proceedings thereon to the end that this cause may be received and determined by this Court and for all other relief as may be proper.

Respectfully submitted,

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Lima, Ohio
June 19, 1941

# Supreme Court of the United States

OCTOBER TERM, 1940.

No. .....

ELIZABETH WRIGHT AND CHARLES C. WRIGHT, PETITIONERS,

VS.

GUSTA LOGAN, HARRIET LOGAN SAWYER AND EXIA LOGAN REESE, RESPONDENTS.

## BRIEF

### In Support of Petition for Writ of Certiorari.

The Subject Index precedes the Petition for Certiorari.

All emphasis is supplied unless otherwise stated.

I.

### THE REPORT OF THE DECISION BELOW.

The opinion below is *Wright* v. *Logan*, 119 F. 2d 354, and it appears at pages 68 to 71 of the record.

## II.

## GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The basis for the jurisdiction of this court has been stated at page 3 of the preceding petition for certiorari.

## III.

## STATEMENT OF THE CASE.

Following a decree in foreclosure the farm of the petitioners was sold and a certificate of purchase was issued to the mortgage holder Logan (R. 26, f. 43, R. 20, f. 19, R. 27, f. 44).

The petitioners originally filed a petition under Section 74 of the Bankruptcy Act which provides for the relief of individual debtors. This petition under Section 74 was pending from May 3, 1934, to April 5, 1935 (R. 2, entries of May 3, 1934, to April 5, 1935). By order of court the reference under Section 74 was set aside and leave was given to file a petition as farmer debtors (R. 2, four entries of April 5, 1935. R. 7, f. 5, R. 8, f. 6).

They filed their farmer debtors' petition on April 5, 1935, under Section 75 (a) to (r) and it was referred to a conciliation commissioner (R. 8, f. 6, R. 2, entries of April 5, 1935). At this time and for more than a year and a half afterward they had by state law a right of redemption by contract with Logan, the mortgage holder. *Wright* v. *Logan*, 288 Ill. App. 481.

The conciliation commissioner made his final report (R. 18, f. 16) stating that there was a "Case pending here in our local court to determine the right of debtors to redeem from W. S. Logan, creditor" (This "case" upon appeal was the decision in *Wright* v. *Logan*, 288 Ill. App. 481,

which has just been referred to). The conciliation commissioner also stated that the farmer debtors claimed the proceeding was not affected by the decision that the original Frazier-Lemke Law (Act of June 28, 1934, original Section 75 (s) ) was unconstitutional. The conciliation commissioner's report reflected the uncertainty at the time concerning the nature of the farmer debtor law.

The farmer debtors later applied for leave to continue further under Section 75 (a) to (r) to work out a composition or an extension with the mortgage holder Logan (R. 19, f. 18). The bankruptcy court granted the application (R. 22, f. 21), and referred the case back to the conciliation commissioner "for such proceedings as provided under subsection (g) of Section 75 as amended" (R. 23, f. 23). Because of the conflicting interest of the conciliation commissioner the reference was vacated and the case was finally referred to Conciliation Commissioner Solon to proceed under Section 75 (a) to (r) for composition or extension (R. 24, f. 24, R. 25, f. 26).

While the proceeding was pending before the conciliation commissioner the case in the state courts to determine whether a right of redemption existed came by appeal to the Appellate Court of Illinois and was finally decided in *Wright* v. *Logan*, 288 Ill. App. 481, on January 15, 1937. It was held that the farmer debtors had by contract with the mortgage holder, Logan, the right of redemption (This was long after the farmer debtor petition was filed on April 5, 1935, R. 8, f. 6).

Meanwhile and following the decision of the state court negotiations for redemption proceeded under the reference to the conciliation commissioner. The farmer debtors submitted a formal proposal. Report of Conciliation Commissioner Solon (R. 41 to 43, R. 42, just preceding folio 29).

The farmer debtors made numerous efforts to obtain a loan through private agencies and through the State

Farm Adjustment Supervisor under the federal Farm Security Administration. The conciliation commissioner reported funds were in sight, with other available funds, sufficient to pay off the Logan mortgage (R. 43). Settlement of practically all debts except the Logan claim was achieved (R. 43, middle of the page). There was more than enough money to pay the Logan mortgage but Logan refused to sign the necessary papers (R. 21, preceding f. 20).

The district judge ordered the farmer debtors to pay rent and they paid rent and taxes (R. 4, entry of March 11, 1939, R. 42 and 43, entries of March 21, 1939, March 28, 1939, July 19, 1939, and next to last paragraph on page 43).

While the proceeding was pending the master's deed in foreclosure was, without compliance with Section 75 (o), unlawfully delivered to the mortgagee, Logan. The facts and references to the record relating to the effect of the delivery of this deed are given in the note below.[2] It was not until March 5, 1940, that the bankruptcy court ordered (in the final order appealed from) that "the deed heretofore issued by the master in chancery be given full force and effect" (R. 48). This order was ineffective because the deed was utterly void. *Kalb* v. *Feuerstein*, 308 U. S. 433.

---

[2]There is in the record an "Order Dissolving Injunction" (R. 17, f. 14). This order referred to a previous order **under Section 74** which was entered May 3, 1934, eleven months before the petition under Section 75 was filed (R. 7, f. 4. R. 8, f. 6). It had no relation to proceedings under Section 75. The bankruptcy court fully recognized that the mortgage remained subject to the farmer debtor proceedings notwithstanding the unlawful delivery of the master's deed as is shown by the following:

On March 11, 1939, the district judge said:

"The deed held by the mortgagees has been retained in their possession under order of this court directing that it **shall not be** recorded or **given any effect** until and unless this court shall so direct" (R. 39, top of page).

"Apparently they are industrious and thrifty. I desire to save any equity they may have. It would seem that there is no equity in the forty acres, but when it is considered in connection with the seventy acre life estate, the debtors might possibly work out a satisfaction not only of the mortgage but of their other

On January 4, 1939, the heirs of Logan, the mortgagee, filed their petition in the bankruptcy court that resulted in the final order (R. 48) which is the subject of this petition for certiorari. This petition is found at R. 26 to 30. It prayed:

> (1) That the conciliation commissioner be ordered to make a report; (2) That the heirs of the mortgagee be permitted to take possession; (3) Or, in the alternative, that the court fix a sum at which the farmer debtors must redeem. The prayer of this petition is at the bottom of R. 29, and at the top of R. 30.

On March 9, 1939, the bankruptcy court heard the petition of the mortgage holders "to determine equity to be done" and ordered the parties to submit a stipulation as to the amount due (R. 4, entry of March 9, 1939). On March 11, 1939, the stipulation was filed that the amount due was $5,560.72 (R. 40). The bankruptcy court also issued an opinion-order (R. 36 to 40), which provided that:

> (1) The farmer debtors should pay rent for past and future (R. 39, f. 64); (2) The cause was continued for 120 days within which the farmer debtors must settle with their creditors (R. 39, bottom of page).

---

debts so that, there then being no liens against the life estate, they would have a means of livelihood" (R. 39, last sentence of paragraph which continues over from page 38).

"The petitioners have a deed to which the court may at any time have full force and effect. Consequently it is unnecessary to have another sale. But in case this court found it necessary to order a sale, there would be a period of redemption of 90 days" (R. 39, the beginning of the first whole paragraph on the page).

"Accordingly it is the order of the court that **the jurisdiction of this court over the deed** held by the petitioners **and over the petitioners be and the same is hereby retained**; that the debtors remain in possession and custody of the property, . . ." (R. 39, beginning at f. 64).

"This matter will be continued for a period of 120 days from this date. During that time debtors shall have every opportunity to redeem from the mortgage sale and to make any and all possible adjustments and composition with their creditors" R. 39, bottom of page).

On January 6, 1940, the bankruptcy court further continued the matter to January 12, and ordered the conciliation commissioner to "file a current report to date," and the conciliation commissioner complied. He concluded his report by saying:

> "I know that Mrs. Wright has been granted a large number of continuances in the above matter for the purpose of effecting the redemption which she is now trying to make, but I feel that **she should be accorded an additional period in which to accomplish the plan which she and Mr. Pace have outlined.** Mrs. Wright has informed me that she has paid the 1938 taxes on the 40 acre and 70 acre tracts.
>
> "Your Commissioner further respectfully reports that he now has on hand the sum of $450 which are rental receipts from Elizabeth Wright" (R. 41, at 43).

The court further continued the case to March 1, by which date the farmer debtors were ordered to pay the full amount of the judgment debt with interest or surrender possession (R. 5, second entry of January 12, 1940, R. 44).

On March 2, 1940, the matter was set for hearing on March 4, 1940 (R. 5, first entry of March 2, 1940). On the same day the farmer debtors filed their amended petition under Section 75 (s) (R. 5, third entry of March 2, 1940).

On March 4, 1940, the matter was further heard and taken under advisement (R. 5, entry of March 4, 1940). On March 5, the final order of the bankruptcy court was entered (R. 48). The appeal and this petition for certiorari stem from this final order.

## SPECIFICATION OF ERRORS.

1.

The bankruptcy court could not deny to the farmer debtors the right to file their amended petition under Section 75 (s) upon their failure to achieve composition or extension under Section 75 (a) to (r).

2.

The bankruptcy court could not dismiss the farmer debtor proceeding while the farmer debtors had on file their application for leave to file an amended petition under section 75 (s).

3.

The bankruptcy court could not dismiss the farmer debtor proceeding while the farmer debtors had on file, or were tendering for filing, their amended petition under Section 75 (s).

4.

The bankruptcy court could not give force and effect to a deed delivered in violation of Section 75 (o).

5.

The bankruptcy court could not authorize the mortgage holders to exercise rights as grantees under a deed delivered in violation of Section 75 (o).

6.

The bankruptcy court could not require the farmer debtors to surrender possession of their real estate security while their application for the benefits of Section 75 (s) was pending.

7.

The bankruptcy court could not require the farmer debtors to redeem their mortgaged security while proceedings were pending under Section 75 (a) to (r).

## SUMMARY OF THE ARGUMENT.

The order of the District Court denying the amended petition, lifting all restrictions from the mortgage holders, ordering the real estate to be surrendered, giving effect to the master's deed, and dismissing the proceedings was erroneous, and unlawfully deprived the appellants of the benefits of Section 75 (s).

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## ARGUMENT.

### Preliminary Statement.

Some inaccurate statements appear in the record. It is desired to correct them lest they interfere with a proper understanding of the facts.

1.

At R. 36, f. 60, near the bottom of the page and at the top of R. 37, it is said in the opinion-order of the bankruptcy court (R. 36 to 40) that it had been held, and the United States Circuit Court of Appeals in *Wright* v. *Logan*, 75 F. 2d 685, had affirmed a holding that the farmer debtors had no interest or right in their farm when they filed a petition under Section 74, which preceded the filing under Section 75. The opinion of the Circuit Court of Appeals in *Wright* v. *Logan*, 75 F. 2d 685, disproves this statement. The only issue and the only point decided was that under Section 74 creditors must **consent in writing** to a proposal before the court can confirm it. The debtor's right in the property was not involved. We quote in support of this statement the first and the last paragraphs of the opinion of the Circuit Court of Appeals:

"Appellants (the debtors) submitted to the bankruptcy court **a proposition for a five year extension** of their debts, pursuant to Section 74 of the Bankruptcy Act. Upon hearing, **the referee denied confirmation of the proposed extension, which ruling was confirmed by the District Court, and is the subject matter of this appeal.**"

. . . . . .

"However liberally we are disposed to construe Section 74 with a view of according to debtors the full scope of the relief thereby contemplated, we are not at liberty to ignore its specific requirement that a majority of creditors in amount as well as in number must **consent in writing** to such proposed extension before the bankruptcy court may confirm it." *Wright* v. *Logan*, 75 F. 2d 685.

It is quite clear that the federal court did not consider the debtor's right in the property. In further support of the foregoing statement is the following: On January 15, 1937, which was more than two and a half years after the petition under Section 74 was filed, the Appellate Court of Illinois decided that the debtors then still had the right of redemption by agreement, with the mortgage holder Logan, which extended the statutory period for redemption. This decision, reported as *Wright* v. *Logan*, 288 Ill. App. 481, after first finding that the United States Circuit Court of Appeals **had not** made any holding concerning the debtors' interest in the property, then proceeded to decide that they had a right of redemption by agreement with Logan, the mortgage holder, independent of the state statutory period for redemption.

2.

In the opinion-order of March 11, 1939 (R. 36 to 40) it is further said, at R. 37, f. 61, that "Upon expiration of the period of redemption of 15 months, the master-in-chancery executed and delivered to Logan a deed for the real estate." This deed is void because it was executed

and delivered while the petition under Section 75 (a) to (r) was pending, and was in violation of Section 75 (o). The bankruptcy court at all times recognized the nullity of this deed and held the deed and the real estate to be subject to the jurisdiction of the bankruptcy court. This has been discussed at pages 12-13 of this brief in Note 2. Also it should be said that the debtors' original right of redemption does not rest upon statute but upon contract. This was finally determined by the decision of the state court in *Wright* v. *Logan*, 288 Ill. App. 481.

3.

The opinion-order of March 11, 1939 (R 36 to 40), at the bottom of page 38 says of the farmer debtors that "They **have failed to comply with the federal act by paying the usual and customary rental.**" The federal act under which the proceeding was pending (Section 75 (a) (r)) does not require the payment of rental. It is only Section 75 (s) which provides for rental payments and this farmer debtor proceeding has never been under Section 75 (s).

**Two Essential Facts.**

It is essential clearly to understand two things about this case:

1.

**The Farmer Debtor Proceeding Was Never under Section 75 (s).**

It was at all times under Section 75 (a) to (r). No petition under Section 75 (s) was ever filed until March 2, 1940, and then the bankruptcy court denied the right of the farmer debtors to proceed under it and dismissed the entire case.

References to the record relating to the foregoing statement:

R. 8, f. 6 "Debtor's petition" filed April 5, 1935, being the original petition under Section 75 (a) to (r) for composition or extension.

R. 19, f. 18 "Amended debtor's petition" filed October 9, 1935 (Application for leave to continue under Section 75 (a) to (r)).

R. 22, f. 21 "Order of Approval" entered October 14, 1935.

R. 22, f. 22 "Order Reinstating Cause, etc." entered October 14, 1935, specifically continuing the proceeding under Section 75 (g) of subsections (a) to (r).

R. 23, f. 23 "Order Re-Reference" entered October 14, 1935, specifically directing proceeding under Section 75 (a) to (r) for composition or extension.

R. 25, f. 26 "Order of Re-Reference" entered November 12, 1935, transferring reference to Conciliation Commissioner Solon because of the conflicting interest of the original conciliation commissioner, again specifically referring to proceeding under Section 75 (a) to (r) for composition or extension.

R. 41, f. 28 "Report of Conciliation Commissioner" filed January 12, 1940, giving the history of the proceeding under Section 75 (a) to (r) for composition or extension before conciliation commissioner Solon.

The only petition under Section 75 (s) ever presented to the court is that at R. 47, f. 70, filed March 2, 1940.

2.

**The Bankruptcy Court Itself Kept the Proceeding under Sections 75 (a) to (r).**

It was not until March 5, 1940, in the final order appealed from, at R. 48, that the court intimated that it considered the proceeding to be under Section 75 (s) for a

moratorium instead of under Section 75 (a) to (r). The court there said:

> "The court has at all times treated this proceeding **as if it were under 75S** and has granted to the debtors what is substantially an eight years moratorium, all of which appeared by orders entered March 11, 1939, and January 12, 1940, both of which are incorporated herein by way of reference." Quoted from the final order at R. 48, first paragraph.

References to the record relating to the foregoing statement:

| | |
|---|---|
| R. 22, f. 21 | "Order of Approval" entered October 14, 1935, approving the application to continue under Section 75 (a) to (r) for "A composition or an extension of time to pay their debts." |
| R. 22, f. 22 | "Order reinstating cause under Section 75 and for Reference to Conciliation Commissioner to Consider Composition or Extension Agreement." entered October 14, 1935, specifically reinstating the case under Section 75 (g) of subsection (a) to (r). |
| R. 23, f. 23 | "Order of Re-Reference" entered October 14, 1935, specifically referring to proceeding for composition or extension. |
| R. 25, f. 26 | "Order of Re-Reference" entered November 12, 1935, rereferring the proceeding to the new conciliation commissioner and again specifically directing proceeding for composition or extension. |
| R. 36 to 40 at R. 39 | "Order Upon Petition of W. S. Logan, *et al.*" entered March 11, 1939, continuing for 120 days the matter of the creditors' motion for payment or dismissal. |
| R. 31, f. 21 | "Report of Conciliation Commissioner" filed January 12, 1940, showing conduct of the proceeding before the conciliа- |

| | |
|---|---|
| | tion commissioner and recommending that further time be granted to the farmer detbors to come to a settlement with the mortgage holder. Bottom of R. 43. |
| R. 44, f. 68 | Order granting the creditors' motion and requiring the farmer debtors to pay pay the mortgage debt in full or surrender possession by March 1, 1940. |
| R. 4, entry of March 2, 1940 | Order, setting case for hearing March 4, 1940. |
| R. 48 | Final order entered March 5, 1940, which was the subject of the appeal and is the subject of this petition for certiorari. |

**The Narrow Question.**

The narrow question is whether a bankruptcy court may, by its own acts, keep a proceeding under Section 75 (a) to (r) pending under its superivsion for a length of time and then decide that it has given to the farmer debtor "the equivalent of proceedings under Section 75 (s)" and deny his statutory right to file an amended petition under Section 75 (s). As late as January 12, 1940, the court itself considered that further time should be extended. Report of conciliation commissioner, R. 41 to 43, at the bottom of page 43: "I feel that she should be accorded an additional period in which to accomplish the plan which she and Mr. Pace have outlined."

If the bankruptcy court may do this then the "mandate of the statute"; the "scheme of the statute"; the "orderly procedure"; the "procedure prescribed by Section 75 (s)"; the "compliance with the procedure required by the statute"; the "orderly administration"; and so forth, so many times by this Court enjoined upon the bankruptcy court have been evaded, and the result would be to rewrite the Act, so as to vest in the court a power which Con-

gress did not plainly delegate." The foregoing well-known quotations are from the unanimous decisions of this court in *John Hancock* v. *Bartels*, 308 U. S. 180; *Borchard* v. *California Bank*, 310 U. S. 311; and *Wright* v. *Union Central*, 311 U. S. 273.

**The Borchard and Wright Dismissals Compared.**

The length of time the proceeding was kept pending before the bankruptcy court is immaterial and can not be used by the parties and the court to deprive the farmer debtor of the statutory right to file an amended petition under Section 75 (s). The parties may not resort "to a procedure not contemplated by the statute." *Borchard* v. *California Bank*, 310 U. S. 311, 317. In the Borchard case the length of time was about the same as in this case:

| | Petition 75 Filed | Dismissal Appealed From | From filing to Dismissal |
|---|---|---|---|
| Borchard Case | November 17, 1934 | March 25, 1939 | 4 years 4 months |
| Elizabeth Wright Case | April 25, 1935 | March 4, 1940 | 4 years 10 months |

The basic reasoning upon which the bankruptcy court in each case based its order of dismissal is essentially the same: (1) the debt is more than the value of the security; (2) the creditors have waited several years; (3) the debtors have had ample opportunity to redeem their security; (4) it is fair and equitable to remove all restrictions from the mortgage holders.

We quote:

From the Borchard bankruptcy court reasoning (as recapitulated by this court in *Borchard* v. *California Bank*, 310 U. S. 311, at page 316):

> "The court took testimony as to value and concluded that the real estate was not worth more than $65,000 [the mortgage debt was $89,246]. It found that, as the debtors had had several years within which

to arrange an adjustment of their obligations and had been unable so to do, it was fair and equitable that the bank be allowed to proceed so as to save itself further loss. The petition was granted and the outstanding restraining order was dissolved."

From the Wright bankruptcy court reasoning:

From the opinion-order of March 11, 1939, at R. 36 to 40. R. 38 at the beginning of the paragraph at folio 63: "On the undisputed evidence the land is fairly worth $5000. The total indebtedness represented by the decree of foreclosure, deficiency judgment and the interest and taxes, less such creditors as have been paid, is $5560.72." . . . R. 39, near the top of the page: "Seven years have passed since entry of the decree of foreclosure and it is obvious that the creditors have been most reasonable in permitting such a period to elapse without realization of tangible results from the mortgage owned by them." . . . R. 48, second paragraph of the Order of March 5, 1940: "because I am without right or power to deprive the mortgagees of their rights longer, and because the debtor has enjoyed a moratorium far in excess of that provided by the Bankruptcy Act . . ."

It may be assumed that this Wright dismissal was made upon the authority of the Borchard dismissal as the Borchard dismissal had not yet been overruled on March 5, 1940, when this Wright case was dismissed. This Court reversed the Borchard dismissal two months later on March 20, 1940.

We submit that this order of dismissal calls for the corrective action of this court as it is essentially the Borchard dismissal over again.

**The Master's Deed Is Void.**

The bankruptcy court could not by its order inject validity into the void deed which was delivered by the master in the state court foreclosure case while a proceeding under Section 75 (a) to (r) was pending. The

court itself right up to the final order of March 5, 1940, considered the deed to be invalid. The subject has been presented in Note 2 pages 12-13 of this brief. This court settled the question when it decided *Kalb* v. *Feuerstein*, 308 U. S. 433.

**Illinois Law of Foreclosure.**

Lest it be suggested that some right was lost to the farmer debtors by the foreclosure sale it is here submitted that under Illinois law the purchaser at a foreclosure sale is entitled to a certificate of purchase but title remains in the mortgagor until the delivery of a deed to the holder of the certificate of purchase. *Lightcap* v. *Bradley*, 186 Ill. 510, 532:

> "By the decree and by the statutes the title of the mortgagor and those claiming under him would be divested and the legal title vested in defendant [the mortgagee who held the certificate of purchase], upon the execution of a deed to her."

In *Lightcap* v. *Bradley*, the mortgagee purchased the real estate at foreclosure sale and took a certificate of purchase. She then went into possession and paid the taxes for fifteen years but did not receive a deed. The mortgagor never redeemed. It was held that the mortgagee purchaser had no right whatever in the land.

**Applicable Pronouncements of This Court.**

Finally the following clear pronouncements of this Court are applicable to this case:

> "On failure of composition and extension, further opportunity for rehabilitation is afforded the debtor, through provisions enabling him to retain possession of his property, under conditions favorable to its ultimate redemption by him. These steps are carried out under judicial supervision, subsection (s)." *Adair* v. *Bank*, 303 U. S. 350, at page 355.

"Subsection (s) of Section 75 as amended by the Act of August 25, 1935, prescribes a definite course of procedure. That subsection applies explicitly to a case of a farmer who has failed to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a proposal for a composition or an extension of time to pay his debts.". . ."He succeeded in obtaining an agreement with certain unsecured creditors for an extension but the secured creditor refused consent, as Bartels could not meet all his arrears. Bartels was thus precisely in the condition prescribed in subsection (s)." . . . "The plain purpose of Section 75 was to afford relief to such debtors who found themselves in economic distress however severe, by giving them the chance to seek an agreement with their creditors (subsections (a) to (r)) and, failing this, to ask for the other relief afforded by subsection (s)." . . . "The scheme of the statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor, while protecting the interests of his creditors by assuring the fair application of whatever property debtor has to the payment of their claims, the priorities and liens of secured creditors being preserved. See *Wright* v. *Vinton Branch, supra; Adair* v. *Bank of American Association*, 303 U. S. 350, 354, 357; *Wright* v. *Union Central Life Insurance Co.*, 304 U. S. 502, 516, 517." . . . "We hold that on his amended petition invoking subsection (s) Bartels was entitled to be adjudged a bankrupt and to have his proceeding for relief entertained and his property dealt with in accordance with the subsection." *John Hancock* v. *Bartels*, 308 U. S. 180, at pages 183, 184, 185, 187.

"That orderly procedure includes an application by the debtor, such as was made in the present case, for an appraisal of the property, an order that the debtor remain in possession upon terms fair and equitable to him and to secured creditors, and the entry of a stay which will assure him of his possession for three years from the date of the order, upon the conditions mentioned in the Act." . . . "For more than thirty-one months after the petition for appraisal was

filed no action was taken. An appraisal was thereafter made. No stay order has been entered fixing terms on which the debtors are to remain in possession. The petitioners were entitled to compliance with the procedure required by the statute." *Borchard* v. *California Bank*, 310 U. S. 311, at page 317.

"And to hold that the court has the discretion to deny or to grant the debtor's right to redeem at the reappraised value or at the value fixed by the court, dependent on general equitable considerations, would be to rewrite the Act, so as to vest in the court a power which Congress did not plainly delegate." *Wright* v. *Union Central*, 311 U. S. 273, at page 281.

At no time were these farmer debtors given an opportunity to redeem their farm at its appraised value. They have been utterly deprived of their statutory right to invoke the procedure prescribed by Section 75 (s) under their amended petition.

**Conclusion.**

Wherefore your petitioners pray this court to issue a writ of certiorari to the Appellate Court.

Respectfully submitted,

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Lima, Ohio
June 25, 1941